

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1082

Introduced by Assembly Member Ruskin

February 22, 2005

An act to *amend Section 2891 of, and to add Article 11* (commencing with Section 905) to Chapter 4 of Part 1 of Division 1 of, the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1082, as amended, Ruskin. Telecommunications: consumer protection.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Pursuant to existing law, the commission adopted a general order applicable to all commission-regulated telecommunications utilities known as the telecommunications consumers' Bill of Rights.

This bill would state the intent of the Legislature to establish consumer protections that are, at a minimum, as protective as those originally adopted by the commission in the telecommunication consumers' Bill of Rights and to establish additional protections for the right of privacy of consumers. The bill would require that the commission, by July 1, 2006, develop and enforce consumer protection rules for telecommunications service, including mobile telephony services, as defined, that achieve certain policies and meet specified requirements. The bill would additionally require that the commission, by July 1, 2006, develop and enforce consumer protection rules for charges for ~~non-communications~~ *noncommunication* services on telephone corporation billings, that meet specified requirements.

Existing law prescribes the circumstances under which a telephone and telegraph corporation may release certain information regarding a residential subscriber without his or her written consent. Existing law authorizes a subscriber to rescind his or her written consent and requires the corporation to cease to make available the prescribed personal information within 30 days following receipt of notice of rescission.

This bill would prescribe the circumstances under which telephone and telegraph corporations, including mobile telephony service providers, as defined, or an affiliate, as defined, may release certain information regarding residential subscribers without their express consent, as defined. The bill would add a residential subscriber's electronic mail or other contact information as an item of prescribed information. The bill would require that any telephone or telegraph company that maintains an Internet Web site that enables a subscriber to provide express consent pursuant to a certain law pertaining to electronic transactions, contain a readily viewable page that a subscriber can use to cancel the express consent. The bill would require that, upon a subscriber rescinding the subscriber's express consent, the corporation cease making the prescribed information available within a reasonable period of time, not to exceed 30 days, following receipt of notice of rescission.

This bill would require a telephone or telegraph corporation, upon request by any subscriber, to disclose the confidential information about the subscriber that the corporation has in its possession and to afford the subscriber an opportunity to challenge any inaccuracies in the information. The bill would require the corporation to exercise due care to correct any inaccuracies brought to the attention of the corporation by the subscriber. The bill would require the corporation, upon request by any subscriber, to disclose to the subscriber how the subscriber's confidential information had been used and the identity of each person or corporation, or affiliate of the corporation that was provided with access to the information. The corporation would be authorized to refuse to respond to unreasonably repetitive requests from the same subscriber for information pursuant to these requirements.

Under existing law, a violation of the Public Utilities Act or an order or decision of the commission is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the commission would be required to implement

certain of the provisions. Because a violation of the bill's provisions or of an order or decision of the commission implementing those provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 11 (commencing with Section 905) is
2 added to Chapter 4 of Part 1 of Division 1 of the Public Utilities
3 Code, to read:

4
5 Article 11. Telecommunications Bill of Rights
6

7 905. (a) It is the intent of the Legislature to establish
8 consumer protections that are at a minimum, as protective as
9 those adopted by the commission in Decision 04-05-057.

10 (b) For purposes of this section, "mobile telephony services"
11 means commercially available interconnected mobile phone
12 services that provide access to the public switched telephone
13 network (PSTN) via mobile communication devices employing
14 radiowave technology to transmit calls, including cellular
15 radiotelephone, broadband Personal Communications Services
16 (PCS), and digital Specialized Mobile Radio (SMR). "Mobile
17 telephony services" does not include mobile satellite services or
18 mobile data services used exclusively for the delivery of
19 nonvoice information to a mobile device.

20 (c) The commission shall, by July 1, 2006, develop and
21 enforce consumer protection rules for telecommunications
22 service, including mobile telephony services, that achieve all of
23 the following policies:

24 (1) A consumer has a right to receive clear and complete
25 information about rates, terms, and conditions for available

1 products and services, and to be charged only according to the
2 rates, terms, and conditions the consumer has agreed to.

3 (2) A consumer has a right to select services and vendors, and
4 to have the consumer's choices respected by telecommunications
5 service providers.

6 (3) A consumer has a right to personal privacy, to have
7 protection from unauthorized use of the consumer's records and
8 personal information, and to reject intrusive communications and
9 technology.

10 (4) A consumer has a right to participate in public policy
11 proceedings, to be informed of his or her rights and what
12 agencies enforce those rights, and to have effective recourse if
13 his or her rights are violated.

14 (5) A consumer has a right to accurate and understandable
15 bills for products and services authorized by the consumer, and to
16 fair, prompt, and courteous redress for problems the consumer
17 encounters.

18 (6) A consumer has the right to be treated equally to all other
19 similarly-situated consumers, free of prejudice or disadvantage.

20 (7) A consumer has a right to safety and security of person and
21 property.

22 (d) The rules adopted by the commission pursuant to
23 subdivision (c) shall include all of the following requirements:

24 (1) A telephone corporation shall disclose its rates, terms, and
25 conditions of service and, upon request, provide its customers
26 with a complete explanation of the charges comprising the
27 customer's bill.

28 (2) A telephone corporation shall make no statement about
29 rates and services that is deceptive, untrue, or misleading.

30 (3) A telephone corporations shall provide customers with
31 written confirmation of every order for service and a written
32 copy of each contract between the telephone corporation and the
33 customer. A customer may cancel without termination fees or
34 penalties, any new service or contract for service within 30 days
35 after the new service is initiated.

36 (4) Every advertisement of the price, rate, or unit value of a
37 prepaid calling card or prepaid calling service shall include a
38 disclosure of any geographic limitation on the advertised price,
39 any minimum charges, any expiration policies, and any relevant
40 fees or surcharges. If any language other than English is used in

1 the advertising or promotion of the prepaid calling card or
2 prepaid calling service the disclosure shall be in that language.

3 (5) A telephone corporation may not require a deposit to
4 establish or ~~re-establish~~ *reestablished* service unless a customer
5 is unable to demonstrate acceptable credit. No deposit imposed
6 by a telephone corporation may exceed twice the estimated
7 monthly bill for basic service. Every deposit shall be refunded
8 after one continuous year of timely payments for basic service by
9 the customer, and not later than 30 days after basic service is
10 discontinued.

11 (6) Every telephone corporation billing statement shall be
12 clearly organized and may only contain charges for products and
13 services which have been authorized by the customer. All
14 mandated government taxes, surcharges, and fees required to be
15 collected from customers and to be remitted to federal, state, or
16 local governments shall be separately listed and identified as
17 “government fees and taxes”. This section of the billing shall not
18 include any charges for which the company is not required to
19 remit the moneys to the government.

20 (7) A telephone corporation shall credit payments effective the
21 business day payments are received by the telephone corporation
22 or its agent. No billing shall include any previously unbilled
23 charge for intrastate service furnished more than three months
24 immediately preceding the date of the billing, except that the
25 billing may include roaming charges for mobile telephony
26 services on a system other than the subscriber’s home system for
27 up to four months immediately preceding the date of the billing,
28 and the billing may include charges for collect, third-party, and
29 calling card calls for up to the five months immediately
30 preceding the date of the billing. Telephone corporations shall
31 prorate charges for basic service for partial months. Billings must
32 be based on the rates in effect at the time the service was used.

33 (8) A telephone corporation shall provide reasonable notice to
34 all affected customers of every proposed change in the
35 customer’s service agreement or any contract change that may
36 result in higher rates or charges or more restrictive terms or
37 conditions and any service agreement or contract change may not
38 be implemented without the express consent of the customer.

39 (9) A telephone corporations shall provide written notice to
40 any customer whose payments are overdue not less than 7

1 calendar days prior to terminating service for ~~non-payment~~
2 *nonpayment*. Basic exchange service may not be disconnected on
3 any day that telephone corporation representatives are not
4 available to assist customers.

5 (10) A telephone corporation shall investigate a customer
6 billing dispute and reach a determination and communicate that
7 determination to the customer within 30 days. During the
8 investigation of the customer billing dispute, no late charge or
9 penalty may be collected from the customer, the charge in
10 dispute may not be sent to collection, and no adverse credit
11 report may be filed as to the customer. Disputes shall be resolved
12 pursuant to California law and the forum for adjudication of
13 disputes shall be the county in California in which the customer
14 receives the billing or the customer's primary place of use of the
15 service.

16 (11) A telephone corporation shall designate one or more
17 representatives to be available during regular business hours to
18 accept Consumer Affairs Branch inquiries from the commission.
19 The telephone corporation shall provide all documents and
20 information requested by the branch.

21 (12) A telephone corporation shall issue an identification card
22 to every employee who has occasion to enter the premises of
23 customers on behalf of the telephone corporation. No telephone
24 corporation shall misrepresent, or allow its employees to
25 misrepresent, its association or affiliation with the corporation
26 when soliciting or implementing the customer's agreement to
27 purchase products or services.

28 (13) A telephone corporation shall provide every residential
29 customer, and every mobile telephony handset that is
30 technologically compatible with its system, with access to the
31 9-1-1 emergency dialing system regardless of whether an account
32 has been established.

33 (e) The commission shall, by July 1, 2006, develop and
34 enforce consumer protection rules for charges for
35 non-communications services on telephone corporation billings,
36 that include all of the following:

37 (1) A telephone corporation billing may not contain
38 non-communications related charges unless the telephone
39 corporation obtains the express written authorization of the
40 customer and the telephone corporation uses a Personal

1 Identification Number (PIN) or other equally reliable security
2 procedure approved by the commission, that is designed to
3 prevent persons or entities other than the customer and
4 individuals authorized by the customer, from placing charges.

5 (2) A telephone corporation shall take reasonable precautions
6 to screen vendors and billing agents before agreeing to provide
7 billing services for non-communications related charges by the
8 vendor or billing agent, in order to screen out unreliable or
9 untrustworthy business entities.

10 (3) A telephone corporation shall not disconnect basic
11 telephone service for nonpayment of non-communications
12 related charges.

13 (4) A telephone corporation shall separately identify all
14 non-communications related charges on every billing, with clear
15 and concise descriptions of the product or service for which a
16 charge has been imposed.

17 906. (a) It is the intent of the Legislature to establish
18 additional protections for the right of privacy of consumers.
19 Consumer information that is protected by the right of privacy is
20 that information collected or developed by a carrier solely by
21 virtue of the relationship with the consumer to which the
22 consumer has a reasonable expectation of privacy, including:

23 (1) Information about the consumer collected directly from the
24 consumer or from another source, including the consumer's social
25 security number, credit history, *electronic mail or e-mail*
26 *address*, and personal financial information.

27 (2) Information about the consumer derived from the provision
28 of service to the consumer, including the consumer's calling
29 patterns, types of calls, destinations of calls, amount of usage,
30 services subscribed to by the consumer, and other information
31 derived from telephone billings.

32 (3) The consumer's name, telephone number, and address, for
33 those consumers requesting that this information be withheld
34 from a printed or electronic directory. Published subscriber list
35 information is not protected by the right of privacy.

36 (b) The commission shall, by July 1, 2006, develop and
37 enforce consumer protection rules for telecommunications
38 service, including mobile telephony services, that achieve all of
39 the following policies:

1 (1) Require every provider of telecommunications services to
2 be responsible for the appropriate handling of confidential
3 consumer information that is protected by a right to privacy that
4 is under its control and to designate an individual or individuals
5 who are accountable for the provider's duty to protect the
6 personal privacy of consumers.

7 (2) Except for those exceptions set forth in subdivision (d) of
8 Section 2891 and Section 2894, require a provider of
9 telecommunications services to collect, use, and disclose to third
10 parties confidential consumer information that is protected by the
11 right to privacy only with the knowledge and prior affirmative
12 written consent of the consumer, and only for the purposes
13 agreed to by the consumer. For purposes of this paragraph, "third
14 party" means any person not employed by the provider of a
15 corporation other than the provider, including an affiliate of the
16 provider.

17 (3) Except for those exceptions set forth in subdivision (d) of
18 Section 2891 and Section 2894, require a provider of
19 telecommunications services to first obtain the consumer's
20 consent before using confidential information for a purpose other
21 than the provision of, or billing for, services performed for the
22 consumer, including marketing a different type of service or
23 other products unrelated to the type of service already being
24 provided to the consumer. In obtaining the consumer's consent,
25 the provider of telecommunications services shall clearly identify
26 the purposes for which the information is collected. The provider
27 of telecommunications services shall maintain a record of every
28 consent obtained pursuant to this paragraph, so long as the
29 provider continues to provide service to the consumer.

30 (4) Require a provider of telecommunications services to
31 provide consumers with reasonable notice of their privacy rights.
32 Whenever a provider of telecommunications services seeks to
33 collect confidential information or to obtain a consumer's consent
34 to use or disclose confidential information, the provider must
35 first provide the consumer, in a clear, accurate, and
36 non-misleading manner, sufficient information to enable the
37 consumer to make an informed decision about whether to provide
38 the information requested or whether to give consent to its use or
39 disclosure. This information shall be provided in writing. This
40 paragraph does not prohibit the provider from providing

1 additional information over and above the requirements of this
2 paragraph, by nonwritten means.

3 (5) Upon request by the consumer, require a provider of
4 telecommunications services to disclose to the consumer the
5 confidential information about the consumer that the provider has
6 in its possession and afford the consumer the opportunity to
7 challenge any inaccuracies. A provider shall exercise due care to
8 correct any inaccuracies brought to the attention of the provider
9 by the consumer. Upon request by the consumer, a provider of
10 telecommunications services shall disclose to the consumer how
11 the consumer's confidential information has been used and every
12 person or entity that was provided with access to the confidential
13 information. The provider may refuse to process unreasonably
14 repetitive requests from the same individual for information.

15 *SEC. 2. Section 2891 of the Public Utilities Code is amended*
16 *to read:*

17 2891. (a) No telephone or telegraph corporation, *including a*
18 *mobile telephony services provider*, shall make available to any
19 other person or corporation, *or make available to an affiliate*,
20 without first obtaining the residential subscriber's *express*
21 *consent, in writing*, any of the following information:

22 (1) The subscriber's personal calling patterns, including any
23 listing of the telephone or other access numbers called by the
24 subscriber, but excluding the identification to the person called of
25 the person calling and the telephone number from which the call
26 was placed, subject to the restrictions in Section 2893, and also
27 excluding billing information concerning the person calling
28 which federal law or regulation requires a telephone corporation
29 to provide to the person called.

30 (2) The residential subscriber's credit or other personal
31 financial information, except when the corporation is ordered by
32 the commission to provide this information to any electrical, gas,
33 heat, telephone, telegraph, or water corporation, or centralized
34 credit check system, for the purpose of determining the
35 creditworthiness of new utility subscribers.

36 (3) The services which the residential subscriber purchases
37 from the corporation or from independent suppliers of
38 information services who use the corporation's telephone or
39 telegraph line to provide service to the residential subscriber.

1 (4) Demographic information about individual residential
2 subscribers, or aggregate information from which individual
3 identities and characteristics have not been removed.

4 (5) *The residential subscriber's electronic mail or e-mail*
5 *address, or other contact information, except as provided in*
6 *subdivision (d).*

7 (b) (1) Any residential subscriber who gives his or her ~~written~~
8 *express* consent for the release of one or more of the categories
9 of personal information specified in subdivision (a) shall be
10 informed by the telephone or telegraph corporation regarding the
11 identity of each person or corporation to whom the information
12 has been released, upon written request. The corporation shall
13 notify every residential subscriber of the provisions of this
14 subdivision whenever *express* consent is requested pursuant to
15 this subdivision.

16 (2) *Upon request by any subscriber, a telephone or telegraph*
17 *corporation shall disclose to the subscriber the confidential*
18 *information about the subscriber that the corporation has in its*
19 *possession and afford the subscriber the opportunity to challenge*
20 *any inaccuracies in the information. A provider shall exercise*
21 *due care to correct any inaccuracies brought to the attention of*
22 *the corporation by the subscriber. Upon request by the*
23 *subscriber, a telephone or telegraph corporation shall disclose to*
24 *the subscriber how the subscriber's confidential information has*
25 *been used and every person or corporation, or affiliate of the*
26 *telephone or telegraph corporation, that was provided with*
27 *access to the confidential information. The telephone or*
28 *telegraph corporation may refuse to respond to unreasonably*
29 *repetitive requests from the same subscriber for information*
30 *pursuant to this paragraph.*

31 (c) Any residential subscriber who has, pursuant to
32 subdivision (b), given ~~written~~ *express* consent for the release of
33 one or more of the categories of personal information specified in
34 subdivision (a) may rescind this *express* consent upon
35 submission of a written notice to the telephone or telegraph
36 corporation. *If the telephone or telegraph corporation maintains*
37 *an Internet Web site that enables a subscriber to provide express*
38 *consent pursuant to the Uniform Electronic Transactions Act*
39 *(Title 2.5 (commencing with Section 1633.1) of Part 2 of Division*
40 *3 of the Civil Code), the Web site shall contain a readily*

viewable page that a subscriber may use to cancel the express consent, with the default settings on the page set to maximize the subscriber's privacy and to maximize restrictions upon information sharing. The corporation shall cease to make available any personal information about the subscriber, within a reasonable period of time, not to exceed 30 days, following the receipt of notice given pursuant to this subdivision.

(d) This section does not apply to any of the following:

(1) Information provided by residential subscribers for inclusion in the corporation's directory of subscribers.

(2) Information customarily provided by the corporation through directory assistance services.

(3) Postal ZIP Code information.

(4) Information provided under supervision of the commission to a collection agency by the telephone corporation exclusively for the collection of unpaid debts.

(5) Information provided to an emergency service agency responding to a 911 telephone call or any other call communicating an imminent threat to life or property.

(6) Information provided to a law enforcement agency in response to lawful process.

(7) Information which is required by the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(8) Information transmitted between telephone or telegraph corporations pursuant to the furnishing of telephone service between or within service areas.

(9) Information required to be provided by the corporation pursuant to rules and orders of the commission or the Federal Communications Commission regarding the provision over telephone lines by parties other than the telephone and telegraph corporations of telephone or information services.

(10) The name and address of the lifeline customers of a telephone corporation provided by that telephone corporation to a public utility for the sole purpose of low-income ratepayer assistance outreach efforts. The telephone corporation receiving the information request pursuant to this paragraph may charge the requesting utility for the cost of the search and release of the requested information. The commission, in its annual low-income ratepayer assistance report, shall assess whether this

1 information has been helpful in the low-income ratepayer
2 assistance outreach efforts.

3 (11) Information provided in response to a request pursuant to
4 subdivision (a) of Section 530.8 of the Penal Code.

5 (e) Every violation is a grounds for a civil suit by the
6 aggrieved residential subscriber against the telephone or
7 telegraph corporation and its employees responsible for the
8 violation.

9 (f) For purposes of this section, ~~“access the following terms~~
10 *have the following meanings:*

11 (1) “Access number” means a telex, teletex, facsimile,
12 computer modem, or any other code which is used by a
13 residential subscriber of a telephone or telegraph corporation to
14 direct a communication to another subscriber of the same or
15 another telephone or telegraph corporation.

16 (2) “Affiliate” means any person or entity that directly, or
17 indirectly through one or more intermediaries, controls, is
18 controlled by, or is under common control with a telephone or
19 telegraph corporation.

20 (3) “Control” means either of the following:

21 (A) The possession, directly or indirectly, of the power to
22 direct or to cause the direction of the management or policies of
23 a person or entity, whether through an ownership, beneficial,
24 contractual, or equitable interest.

25 (B) Direct or indirect ownership of at least 25 percent of an
26 entity, whether through an ownership, beneficial, or equitable
27 interest.

28 (4) “Express consent” means a writing or an electronic
29 record as defined in Section 1633.2 of the Civil Code, that meets
30 all of the following requirements:

31 (A) Is a separate document that is not attached to any other
32 document or for an electronic record, is a contract containing
33 the entire agreement of the parties.

34 (B) Is signed and dated by the subscriber, or for an electronic
35 record, contains an electronic signature of the subscriber, and is
36 unambiguous, concise, and legible.

37 (C) Conspicuously discloses that by signing the subscriber is
38 consenting to have the subscriber’s personal information sold,
39 shared, or licensed to another person or corporation, or an
40 affiliate of the telephone or telegraph corporation.

1 (D) Describes in unambiguous, concise, and conspicuous
2 language the personally identifiable subscriber information the
3 telephone or telegraph corporation shares or sells to any other
4 person or corporation, or affiliate of the telephone or telegraph
5 corporation, and the purposes for which the information may be
6 used. If subscriber information is sold or shared for the purpose
7 of marketing products or services to the subscriber, the form
8 shall additionally state: “Your consent may result in your
9 receiving unsolicited telephone calls, electronic mail or e-mails,
10 or other contacts from businesses offering to sell you products or
11 services.”

12 (E) States that the consent is voluntary, and that a subscriber
13 that does not consent shall experience no adverse terms or
14 conditions or other disadvantages in service.

15 (F) States that a subscriber may rescind the express consent at
16 any time by contacting the telephone or telegraph corporation in
17 writing, by telephone, by electronic mail or e-mail, or by utilizing
18 the telephone or telegraph corporation’s Internet Web site.

19 (5) “Mobile telephony services” means commercially
20 available interconnected mobile phone services that provide
21 access to the public switched telephone network (PSTN) via
22 mobile communication devices employing radiowave technology
23 to transmit calls, including cellular radiotelephone, broadband
24 Personal Communications Services (PCS), and digital
25 Specialized Mobile Radio (SMR).

26 (6) “Residential” means residential use and excludes
27 industrial, commercial, and other categories of end use. A mobile
28 telephony services provider shall presume that a subscriber is a
29 residential subscriber unless the provider has information from
30 the subscriber indicating that the subscriber is an industrial,
31 commercial, or other category of end user.

32 ~~SEC. 2.~~

33 SEC. 3. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the
38 penalty for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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